



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

January 27, 1992

Mr. Stephan L. Sheets
City Attorney
309 East Main Street
Round Rock, Texas 78664

OR92-40

Dear Mr. Sheets:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14443.

The City of Round Rock (the "city"), which you represent, has received a request for information relating to the former City Manager and Director of Public Works. Specifically, the requestor seeks:

all personnel records, including but not limited to resumes, evaluations, reprimands, personnel documents, termination notices, and resignation notices of former city manager Jack Alvin Harzke.

You have submitted to us for review information responsive to the request. This personnel file information includes employee evaluations, an FHA form titled "Request for Verification of Employment," numerous Texas Municipal Retirement System statements, employee vacation and leave information, federal income tax forms, employee absentee record, and various other memoranda. You claim that the requested information is exempted from required public disclosure by sections 3(a)(2) and 3(a)(3) of the Open Records Act.

Section 3(a)(2) exempts from required public disclosure "information in personnel files, the disclosure of which would constitute a clearly unwarranted

invasion of personal privacy." Section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *See Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Information protected by common-law privacy includes personal financial information. Open Records Decision No. 545 (1990), a copy of which is enclosed, held that "[p]ersonal investment decisions appear to be of the kind of financial information that a person of ordinary sensibilities would object to having publicly disclosed." *Id.* at 3. This decision further held that "an individual's investment decisions with respect to a deferred compensation plan, including his choice of investment product and the amounts invested in a product, are not of those kinds of financial transactions that are ordinarily of legitimate public interest." *Id.* at 4. Accordingly, the Texas Municipal Retirement System statements may be withheld from required public disclosure to the extent that they reflect the personal financial decisions of the employee. The remainder of the requested information, however, is not of the type protected by common-law privacy interests and may not be withheld from required public disclosure under section 3(a)(2) of the Open Records Act. *See, e.g.*, Open Records Decision Nos. 342, 329 (1982).

The federal income tax forms are made confidential by federal law and must be withheld from required public disclosure. Attorney General Opinion MW-372 (1981); Open Records Decision No. 523 (1989) at 5.

You also claim that the requested information is excepted from required public disclosure by section 3(a)(3), the "litigation exception." Open Records Decision No. 551 (1990) held that section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Section 3(a)(3) applies only where the litigation involves or is expected to involve the governmental body that is claiming the exception. Open Records Decision No. 392 (1983) at 3. You claim that the requested information is related to litigation between the former city employee and the City of Elgin. The City of Round Rock is not a party to the litigation. As you have not indicated how the city might reasonably anticipate becoming party to the litigation,

the requested information may not be withheld from required public disclosure under section 3(a)(3) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-40.

Yours very truly,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/GK/lcd

Ref.: ID# 14443
ID# 14560

Enclosures: Open Records Decision Nos. 545, 455, 421, 342

cc: Mr. Kevin R. Madison
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